



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

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August 15, 2002

Mr. Richard Pope, Jr.
Attorney-at-Law
2001 NE 177th Street
Shoreline, WA 98155

Dear Mr. Pope:

On August 5, 2002, the Public Disclosure Commission (PDC) received from you a Petition for Repeal of Agency Rules. In that petition, you ask that the Commission repeal WAC 390-16-050, Forms for contributions and expenditures of out-of-state or federal political committees, and WAC 390-16-055, Forfeiture of contributions received from out-of-state or federal political committees, because you believe these rules are "contrary to the statutory provisions of Chapter 42.17 RCW, as well as being unconstitutional for many reasons." (Page 1, line 26, Petition for Repeal of Agency Rules).

According to RCW 34.05.330, within 60 days of submission, the PDC must either deny the petition in writing, provide an alternative means by which it will address your concerns, or initiate rule-making proceedings to repeal the rules at issue.

On August 7, 2002, the Office of the Attorney General received from you a letter asking that office to commence action against the Washington State Democratic Central Committee for violations of RCW 42.17.090(1)(i) as well as WACs 390-16-050 and 390-16-055. On August 14, 2002, the Office of the Attorney General sent your citizen action complaint to the PDC for inclusion in an on-going investigation.

It appears that the two remedies you are seeking -- enforcement of rules that you are simultaneously petitioning for repeal of -- are incompatible. At this point, PDC staff is moving forward with the investigation and is cognizant of the time constraints provided in RCW 42.17.400(4). It would be helpful if you would confirm whether you still wish the Commission to consider your rule-making petition at this time.

Sincerely,

A handwritten signature in black ink that reads "Vicki Rippie".

Vicki Rippie
Executive Director

*"The public's right to know of the financing of political campaigns and lobbying
and the financial affairs of elected officials and candidates far outweighs
any right that these matters remain secret and private."*

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August 17, 2002

VIA FAX TO 360-753-1112 AND REGULAR MAIL

TOTAL PAGES: 6

Vicki Rippie
Executive Director
Public Disclosure Commission
711 Capitol Way, Room 206
Post Office Box 40908
Olympia, Washington 98504-0908

RECEIVED

AUG 19 2002

Re: Citizen Action Letter, RCW 42.17.400(4)
Washington State Democratic Central Committee

Public Disclosure Commission

Rulemaking Petition Re WAC 390-16-050 and 390-16-055

Dear Ms. Rippie:

Thank you for your letter of August 15, 2002. I do not really see any actual conflict or inconsistency between the above two items I have initiated regarding the PDC.

My Citizen Action Letter of August 7, 2002 points out the Rulemaking Petition of August 5, 2002, and that the forfeiture action against the Washington State Democratic Central Committee (WSDCC) should be pursued only if the Attorney General determines "the forfeiture provisions set forth in RCW 42.17.090(1)(1), WAC 390-16-050 and WAC 396-16-055 are both applicable and constitutional". (Page 7)

So presumably one of the two results will occur. If the forfeiture-related rules are either inapplicable or unconstitutional, my Rulemaking Petition will result in a change in PDC rules, and cessation of any PDC enforcement action related to forfeiture under these rules. If not, the PDC will ask the Attorney General to pursue litigation to require the WSDCC and others to forfeit lots of money.

I believe that enforcement action can be taken against the so-called "out-of-state" political committees who did not timely and properly file Forms C-5 with the PDC for their donations to the WSDCC and others. These committees would have been required to fully report under RCW 42.17.080 and 42.17.090 if not otherwise exempted, which requires for all contributions and expenditures to be reported, not just those in Washington. Form C-5 requires only reporting of Washington contributions and expenditures. In any event, they would have had to report at least the C-5 information.

Vicki Rippie -- Page 2
August 17, 2002

I believe WAC 390-16-050 is improper, as a so-called "out-of-state" or "federal" political committee is exempted from the normal reporting requirements of RCW 42.17.080 and 42.17.090, and only requires to file the more limited items contained in Form C-5. However, such an "out-of-state" or "federal" political committee would be required to file all of the information contained in Form C-5, and much more, if they were reporting under RCW 42.17.080 and 42.17.090.

So regardless of whether WAC 390-16-050 is proper, the "out-of-state" and "federal" political committees who gave money to the WSDCC would have been required to report, at the very minimum, everything that the Form C-5 calls for.

Therefore, the "out-of-state" and "federal" political committees listed in my Citizen Action Letter of August 7, 2002 who failed to file, timely file, or completely file their Forms C-5 violated the PDC law, regardless of whether this was merely violating the special requirements of RCW 42.17.090(1)(1) or general requirements of RCW 42.17.080 and 42.17.090. Either way, appropriate enforcement action should be taken against the donating political committees.

I have certainly perceived some partisan bias with the PDC. Perhaps this bias may not be consciously reflected in the thoughts of the PDC or its staff. But on looking back at different enforcement actions, it shows in the results.

In the present situation, the WSDCC has been under investigation for months, due to discrepancies between what out-of-state donors reported on their Forms C-5 and filings with the Federal Elections Commission, and what the WSDCC reported to the PDC. This extensive investigation resulted in a staff complaint against the WSDCC for their improper PDC reporting, but not initially in any forfeiture request because of donors to the WSDCC having Form C-5 problems.

At about the same time, the PDC acted fairly promptly to request forfeiture, when it discovered that certain out-of-state donors to the Washington State Republican Party (WSRP) had failed to timely file Form C-5, even though the WSRP had almost nothing wrong in its own PDC reporting.

I perceived an extreme partisan bias, since the WSRP was being asked to forfeit millions, despite no reporting violations on its own part, and the WSDCC, which was having both C-5 problems and its own reporting problems, was being pursued only for reporting fines, and not C-5 forfeitures.

So I filed my Citizen Action Letter on August 7, 2002, and sent a copy directly to the PDC. Finally, the PDC took some action on the WSDCC's C-5 problems, by sending out a letter about forfeiture sometime around August 15, 2002.

Vicki Rippie -- Page 3
August 17, 2002

While I have not seen the letter you sent to the WSDCC last week, I have read the summary in The Daily Olympian of August 16, 2002. It appears you have mentioned most of the late or nonfiled Forms C-5 in my Citizen Action Letter, and have also found several hundred thousand dollars more that was the subject of late or nonfiled C-5. Compliments are in order for a thorough factual investigation on your part.

You have apparently left out the \$56,739.00 donated by the Washington Victory Fund. While the WVF was based in Seattle, Washington, it was also registered with the FEC, and would have fallen under the purview of WAC 396-16-050 as a "federal" committee. Since the WVF never filed any Form C-5, WAC 396-16-055 would apply to require forfeiture.

There is also the complete failure of the Democratic Congressional Campaign Committee (DCCC) and the Democratic Senatorial Campaign Committee (DSCC) to report any of their Washington contributors of more than \$25.00 during any of the calendar years in question when filing their Forms C-5.

Based on information which can readily be gleaned from www.fecinfo.com, both the DCCC and DSCC have a considerable number of Washington contributors of \$200.00 or more (the FEC threshold) and presumably even have more contributors of \$25.01 or more (the PDC threshold). Every one of the Forms C-5 filed by the DCCC and DSCC should have contained numerous Washington contributors for the year-to-date on the first report of the year, and subsequent contributions for each of the additional Forms C-5 filed during the year.

However, the DCCC has never reported any Washington contributors on any of its Forms C-5. The DSCC reported no Washington contributors in 1998, 1999, 2000, or 2001. In 2002, the DSCC reported only one Washington contributor, when www.fecinfo.com shows a much larger number for 2002.

I think it is very important to require at least the Form C-5 reporting for Washington contributors (if not the full reporting of all contributors under RCW 42.17.080 and 42.17.090) for any political committee making donations to Washington candidates and ballot measures. Otherwise, there is never disclosure of where financing comes from.

The DCCC and DSCC have not complied with the law by any stretch of the imagination, since they have completely omitted their Washington contributors. WAC 396-16-055 would require all their contributions be forfeited to the state, for failing to file a "complete and timely report".

As I pointed out in my Citizen Action Letter, the DCCC gave at least \$2,337,831.63 to the WSDCC from 1998 to 2002, and the DSCC gave at least \$1,581,740.00 from 1998 to 2002.

Vicki Rippie -- Page 4
August 17, 2002

I have also looked at some of the Forms C-5 filed by out-of-state groups (mostly the national Republican groups) who donated to the WSRP. It appeared that a great many of these Forms C-5 also omitted Washington contributors, and this would also need to be looked at by the PDC. However, these same Forms C-5, by and large, appeared to be filed late, so this additional deficiency of omitting Washington contributors would not change the facts relevant to whether or not forfeiture provisions apply to those contributions.

In the future, regardless of whether "out-of-state" and "federal" committees file the special Form C-5 or make regular periodic reports under RCW 42.17.080 and 42.17.090, whatever reports are filed need to be scrutinized to see if Washington contributors are listed (or all contributions, if full periodic reporting becomes required).

Since state law requires a political committee to have received at least ten donations of \$10.00 or more from Washington contributors within the prior six months to make contributions to Washington candidates or ballot measures, any Form C-5 failing to list Washington contributors must be considered suspicious. After it, while possible, it would be highly unlikely to have at least ten Washington residents donating \$10.00, but none donating over \$25.00.

It may seem that the remedies I am seeking - to either enforce the rules, or repeal them - are incompatible. As a lawyer, I often seek incompatible alternative remedies in court, and it is up to the judge to decide which remedy (if any) is appropriate, based on law, facts, and discretion.

It would be up to the PDC to decide whether or not to repeal the rules, as requesting in my Rulemaking Petition. If the rules were repealed for the reasons indicated in my petition, they presumably should not be enforced, whether in the future, or for situations that already happened. In such case, there should be neither forfeiture action taken in response to my Citizen Action Letter, or due to anything else in the past, including other pending investigations.

I recognize the different time constraints imposed by RCW 34.05.330 and RCW 42.17.400(4). There is nothing in RCW 42.17.400(4) which would prohibit my granting extension of the 45 day deadline, as that statute is silent on this.

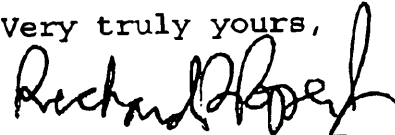
The major difficulty with these timelines would be if the PDC decided to initiate rulemaking in response to my petition, and this process was still pending when the 45 day deadline on the Citizen Action Letter was approaching. On the other hand, if changes to these rules are rejected outright by the PDC, then the PDC would refer enforcement action for these rule violations to the Attorney General.

Vicki Rippie -- Page 5
August 17, 2002

So if the PDC is still considering whether or not to initiate rulemaking in response to my petition, or the PDC has a pending rulemaking process regarding the changes I have proposed in my petition, I would be quite happy to extend the 45 day deadline on my Citizen Action Letter to allow the PDC to take whatever final action that may result from my rulemaking petition. This will avoid any problems that might result from the PDC facing an enforcement deadline on rules that it might be considering repealing.

Thank you for your careful attention in this matter.

Very truly yours,



Richard L. Pope, Jr.

Enclosure (Your Letter to Myself of August 15, 2002)

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